

# **RULES AND REGULATIONS PERTAINING TO THE PROVISION OF EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES**

(R-23-13-EIS)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF HUMAN SERVICES  
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## Section 1.0 ***Purpose of the Early Intervention Program***

### 1.1 ***Purpose:***

The purpose of the Early Intervention (EI) Program is to provide comprehensive, coordinated, community based services that respond to the identified needs of eligible infants, toddlers and their families.

### 1.2 ***Statewide Equity:***

Eligible children and families must have equal access to comprehensive early intervention services, as defined in these regulations, irrespective of geographic location. These services must be fully compliant with all provisions of the regulations. Early intervention services must be made available to all eligible children irrespective of gender, race, ethnicity, religious beliefs, cultural orientation, citizenship, economic status, and educational or medical diagnosis.

## Section 2.0 ***Definitions***

Wherever used in these rules and regulations, the following terms shall be construed as follows:

2.1 "***Act***" means Chapter 23-13 of the RI General Laws, as amended.

2.2 "***Assessment***" means ongoing procedures used by qualified personnel throughout the child's eligibility period to identify the child's and family's unique strengths and needs, and the nature and extent of Early Intervention Services (EIS) needed by child and family.

2.3 "***Children***" means infants and toddlers from birth through age two (2), who need early intervention services

2.4 "***Council***" means the state Interagency Coordinating Council.

2.5 "***Days***" means calendar days.

2.6 "***Department***" means the Rhode Island Department of Human Services.

2.7 "***Destruction***" means physical destruction or removal of personal identification from recorded information.

2.8 "***Developmental delay***" refers to significant delay in the developmental areas of cognition, communication development, and physical development, including vision and hearing, social or emotional development, and/or adaptive behavior.

2.9 "***Director***" means the Director of the Rhode Island Department of Human Services.

2.10 "***Early Intervention System***" means the total effort in the state that is directed at meeting the needs of eligible children and families.

2.11 "***Early Intervention service provider***" means a not-for-profit organization, certified by the Department, that has been exempted from taxation pursuant to Internal Revenue Code Section 501(C)(3) [26 U.S.C. § 501(c)(3)] formed for some charitable or benevolent purpose and which delivers early intervention services as defined herein.

2.12 "***Early Intervention Services***" (here and after referred to as "EIS") means services that are designed to meet the unique developmental needs of the eligible child and the needs of the family related to enhancing the child's development.

2.13 "***Education records***" means the records covered by FERPA (the Family Education Rights and Privacy Act, 34 *Code of Federal Regulations*, Part 99).

2.14 "***Evaluation***" means the procedures used by qualified personnel to determine the child's eligibility.

2.15 "**Health services**" means services necessary to enable a child and family to benefit from other early intervention services during the time the child is receiving these services, and shall include, but not be limited to:

- Cleaning, intermittent catheterization, tracheotomy care, tube feeding, changing of dressings or colostomy collection bags, and other health services;
- Consultation by physicians with other early intervention service providers concerning the special health care needs of eligible children.

Health Services shall NOT include services that are:

- Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).
- Devices necessary to control or treat a medical condition; or
- Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

2.16 "**IFSP**" means the Individualized Family Service Plan defined in section 12.0.

2.17 "**Infants and toddlers with disabilities**" means individuals from birth through age two (2) who need EIS because they:

- Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay
- Are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development (including vision and hearing), communication development, social or emotional development, adaptive development
- Have multiple established conditions, whose circumstances may result in substantial developmental delays if EI services are not provided

2.18 "**Location of services**" means services that are provided in natural environments, to the maximum extent appropriate to meet the child's needs, as determined by the parent and the IFSP team. These include the home and community settings in which infants and toddlers without disabilities participate.

2.19 "**Multidisciplinary**" means involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment and development of IFSP.

2.20 "**Natural environments**" means those home and community settings where EI services are provided, similar to those in which children without disabilities participate, to ensure that opportunities to enhance child development are incorporated into daily routines and activities typical for children under age three (3) and their families, as elaborated on in EI Certification Standards.

2.21 "**Parent**" means

a) General:

1. A natural or adoptive parent of a child;
2. A guardian;
3. A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare);
4. A surrogate parent who has been assigned in accordance with section 16.0 herein.

b) Foster parent. If the natural parents' authority to make the decisions required of parent under the Act has been extinguished under state law; and the foster parent:

1. Has an ongoing, long-term parental relationship with the child;
2. Is willing to make the decisions required of parents under the Act; and
3. Has no interest that would conflict with the interests of the child; and/or
4. Is a surrogate parent who has been assigned in accordance with section 14.5 herein.

The term does not include the state if the child is a ward of the state.

2.22 "**Participating agency**" means any agency or institution that collects, maintains, or uses personally identifiable information, or from which such information is obtained.

2.23 "**Person**" means any individual, trust or estate, partnership, corporation (including associations, joint stock companies), limited liability companies, state or political subdivision or instrumentality of a state.

2.24 "**Qualified personnel**" means personnel who provide Early Intervention services and who have met state approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing EIS.

2.25 "**Service coordination**" means the activities carried out by a service coordinator to assist and enable an eligible child and family to receive the services authorized under the Rhode Island EI program and contained in the IFSP, including all rights and procedural safeguards.

2.26 "**Service coordinator**" means a person from the profession most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

2.27 "**Transportation and related costs**" means travel and other costs that are necessary to enable a child/family to receive EIS.

2.28 "**Types of services**" shall include EI services mandated by federal law and as set forth in the EI Certification Standards.

### Section 3.0 **Lead Agency**

The Department is the lead agency responsible for early intervention services for infants, toddlers, and their families consistent with Part C of IDEA effective July 1, 1991, and section 23-13-22 of the RI General Laws, as amended.

### Section 4.0 **Interagency Coordinating Council (ICC)**

#### 4.1 **Composition of ICC**

The composition of the Council is specifically determined by criteria set forth in Part C of IDEA. Members of the Council are appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the state.

4.2 The Governor shall designate a member of the Council to serve as the chairperson of the Council. Any member of the Council who is a representative of the Department may not serve as the chairperson.

4.3 Appointments to the Council are for a two-year term. Composition of the Council shall include, but not be limited to:

- a) At least twenty percent (20%) of parents of infants or toddlers including minority parents who have been enrolled in the Early Intervention Program within the past three (3) years [minimum 20%];
- b) At least twenty percent (20%) of providers of early intervention services [minimum 20%];
- c) One (1) representative from the legislature;
- d) One (1) college or university member involved in personnel preparation;
- e) One (1) pediatrician.
- f) One (1) representative from each of the state human service agencies involved in the provision of or payment for EIS to infants and toddlers with disabilities and their families (Children, Youth and Families; Education; Health; Human Services; Mental Health; Retardation and Hospitals) having sufficient authority to do policy planning or implementation on behalf of the agency;
- g) One (1) representative from the advocacy community for children with special needs and their families;
- h) At least one (1) representative from the Department of Business Regulation, the agency responsible for state governance of health insurance;
- i) At least one (1) Rhode Island Department of Education, Director of Special Education, responsible for preschool services to children with disabilities. This may or may not be the same representative of the Department of Education as required in subsection (f);
- j) At least one (1) member from Head Start;
- k) At least one (1) member from a state agency responsible for child care. This may or may not be the same representative of the Department of Children, Youth, and Families as required in subsection (f);
- l) At least one (1) member from the State Medicaid Agency;
- m) At least (1) member from the Office of the Coordinator of Education for Homeless Children and Youth;
- n) At least one (1) member from the state child welfare agency responsible for foster care. This may or may not be the same representative of the Department of Children, Youth, and Families as required in subsection (f).
- o) At least one (1) member from the state agency responsible for children's mental health.

The Council may include other members selected by the Governor.

#### **4.4 Duties and Responsibilities of the ICC**

The Council shall assume the following responsibilities consistent with the provisions of Part C of IDEA

- a) The Council will meet at least quarterly as stated in the by-laws;
- b) The Council shall announce meetings in sufficient time as to ensure attendance;
- c) Council meetings shall be open and accessible to the general public;
- d) Interpreters for the deaf and other services needed to support participation of all interested parties will be provided as necessary;
- e) No member of ICC may vote on any matter providing direct financial benefit to self or give appearance of conflict, and must conform to the provisions of Chapter 36-14 of the General Laws of Rhode Island, as amended, entitled "Code of Ethics";

- f) Advise and assist the Department in the development and implementation of the policies that constitute the statewide system;
- g) Assist the Department in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the state;
- h) Assist Department in implementation of the statewide system by establishing a process that includes seeking information from service providers, service coordinators, parents, and others about any federal or state or local policies that impede timely service delivery, and taking steps to ensure that policy problems are identified and resolved;
- i) Assist Department in resolution of disputes to the extent deemed appropriate;
- j) Advise and assist Department and state education agency (SEA) in obtaining appropriate services for children ages birth-5 inclusive;
- k) Advise and assist SEA regarding transition of toddlers with disabilities to services under Part B to preschool and other appropriate services;
- l) Advise or assist Department in the preparation of applications and amendments for applications;
- m) Assist Department in the identification of fiscal sources of support for early intervention programs;
- n) Assist in the assignment of financial responsibility to the appropriate agency;
- o) Assist in the promotion of interagency agreements;
- p) Submit an annual report to the Governor and to the Secretary of Education on the status of early intervention programs within the state.

## **Section 5.0 *Certification of Early Intervention Service Providers***

5.1 No person shall provide EI services as an EI service provider without first becoming certified by the Department.

5.2 In order to become certified as an EI service provider, a person shall submit an application along with the required documentation demonstrating compliance with the Act, rules and regulations herein, and Certification Standards.

5.3 Certification shall be granted for a three-year period. All certifications shall expire on December 31<sup>st</sup> of every third year commencing December 31, 2005.

5.4 The Department shall certify applicants as it deems appropriate and necessary in order to assure a viable statewide early intervention system that provides quality services to infants and toddlers with disabilities and developmental delay.

### **5.5 *General Certification Requirements***

An EI service provider shall comply with all federal IDEA (Individuals with Disabilities Education Act) requirements.

5.6 All EI service providers shall be capable of providing EI services on a statewide basis.

5.7 All infants and toddlers presumed eligible for EI services shall be promptly and accurately identified, located, and referred to EI and, if found to be eligible, shall have individualized family service plans (IFSPs) developed that accurately reflect their needs.

5.8 EI service providers shall provide care and services to children in accordance with the prevailing community standard of care.

5.9 It shall be the responsibility of the EI service provider to ensure timely referral for all children whose IFSP designates services provided by other agencies as needed. Further,

those children who are evaluated by EI providers but are not eligible for EI services shall be referred for appropriate services (e.g., CEDARR Family Centers, Early Head Start, Starting Right) with family consent. Unmet needs of this population shall be documented and submitted in accordance with Department statistical reporting requirements.

5.10 EI service providers shall assess the child's and family's needs in the family's native language or other communication mode of the parent. If this is not feasible, an interpreter shall be provided.

5.11 EI service providers shall ensure that parents are actively involved in the preparation and implementation of the IFSP, including transition planning.

5.12 EI service providers shall ensure that there is an effective, ongoing quality improvement plan in place to evaluate the provision of EI services that is coordinated with the Department's quality assurance efforts. This plan shall be available for the Department's review. Program evaluation results shall be utilized to correct identified deficiencies and to meet identified needs of children and parents.

5.13 EI service providers shall utilize evaluation and assessment procedures that are responsive to the unique demographic, cultural, racial, and ethnic characteristics of the families served.

5.14 Appropriate EI services shall be:

- Selected in collaboration with parents;
- Provided under public supervision;
- Provided by qualified personnel;
- Provided in conformity with an Individualized Family Service Plan (IFSP);
- Provided at no cost unless state law requires a system of payments;
- Provided in accordance with state standards;
- Provided in natural environments to the maximum extent appropriate to the child's needs;
- Designed to enhance both the development of the child, as well as the family's capacity to meet the child's needs.

**5.15 *Certification Requirements Related to Organizational Capabilities***

EI service providers shall have written memoranda of understanding with community agencies where children are receiving EI services.

5.16 EI service providers shall have not-for-profit status.

5.17 EI service providers shall provide services in accordance with the Department's *Certification Standards for Early Intervention*.

5.18 EI service providers shall maintain appropriate and necessary staff to ensure timely fiscal management that maximizes collection of funds from available sources (e.g., Medicaid, private insurers).

5.19 Fees shall not be charged to families for the provision of child find services, evaluation and assessment, IFSP development, review and evaluation, service coordination, and implementation of procedural safeguards.

5.20 Under no circumstances shall EI services be withheld based upon a family's financial status or inability to pay for services.

5.21 No services that a child is entitled to receive shall be delayed or denied due to disputes between agencies regarding financial or other responsibilities.

5.22 EI fiscal services shall adhere to recognized standard accounting practices.

5.23 An annual certified audit, as prescribed by the Department, shall be maintained on file by the EI service provider for a period of no less than three (3) years. A copy of said annual audit shall be forwarded to the Department upon request.

5.24 EI service providers shall maintain management information systems, compatible with the Department's, to ensure timely billing, data reporting, and quality improvement activities.

5.25 Each EI service provider shall report to the Department statistical data on its operations and services. Such reports shall be made at such intervals and by such dates as determined by the Department.

## **Section 6.0 *Definition of the Eligible Population***

6.1 Children eligible for early intervention services shall include all infants and toddlers who have received a multidisciplinary team evaluation consistent with procedures described in sections 9.5--9.7 and who meet the criteria specified in section 6.0 or are eligible due to a designated single established condition.

6.2 Eligible children include those with:

6.21 Children with a Single Established Condition

*Criteria:* The child has a physical or mental condition known to impact development, including, but not limited to, diagnosed chromosomal, neurological, metabolic disorders, or hearing impairments and visual impairments not corrected by medical intervention or prosthesis. Evidence of diagnosis must be in the child's record.

6.22 Children with established developmental delays.

*Criteria:* The child exhibits a delay in one or more areas of development (that is, 2 standard deviations below the mean in one area of development, or 1.5 standard deviations below mean in two or more areas of development, or if using developmental age or age equivalents, a delay greater than or equal to 33% in one area or 25% in two or more areas of development.)

6.23 Children with multiple established conditions.

*Criteria:* As a guideline, the identification of any one child characteristic and three (3) additional child or family circumstances. Evidence of these criteria should be documented in the child's record along with appropriate goals and treatment strategies as determined by the family and the IFSP team.

## **Section 7.0 *Central Directory of Services***

7.1 The Department shall oversee a directory of local, regional, and statewide resources for infants, toddlers, and their families, which shall include:

- a) Information on all health care, education, mental health, child care, developmental, financial, and other social service programs which are available for young children and families;
- b) Information on research and demonstration projects in the state;
- c) Professionals and other groups providing assistance to children and families;
- d) Public and private early intervention services; and



- e) Public and private resources and experts available to providers or families.  
This directory shall be updated at least annually and be accessible to the general public and be available in places and in a manner that ensures accessibility by persons with disabilities.

## Section 8.0 ***Comprehensive Child Find System***

Child Find efforts shall be coordinated by the Department with all state agencies and relevant community programs (e.g., Department of Education, Maternal and Child Health, Medicaid EPSDT, Department of Children, Youth and Families, Head Start and Family Outreach Program). Three methods, universal screening, direct referrals and public awareness, shall be implemented concurrently on a statewide basis to ensure that all infants and toddlers in the state who are eligible for services are identified, located, and evaluated.

### 8.1 ***Universal Screening***

Universal screening shall mean that every child born in Rhode Island shall be screened at birth for risk factors related to developmental delay, or adverse developmental consequences. Follow-up screening shall occur at periodic intervals between birth and through age two (2). This initial screening may occur in the hospital and will continue via other health care providers in the community.

8.2 In-home screening, for all those identified as having risk factors in section 8.1, is a comprehensive process that is intended to identify children in need of additional services. After in-home screening is completed, and on-going risk factors have been identified, the child and family's needs will be addressed through a community based review process. Alternatively, children who are determined to have probable eligibility for EIS may be referred to an EI service provider.

### 8.3 ***Direct Referrals***

All early intervention service providers certified by the Department in accordance with sections 5.0 and 10.0, shall implement a standard referral process which permits families and community-based agencies to refer infants and toddlers directly to programs for screening, evaluation and assessment to determine eligibility for EIS.

8.4 Referral will be made by primary referral services, (i.e. hospitals, physicians, parents, child care centers, LEAs, public health facilities, other social service agencies and other health care providers) within two (2) working days after the child is identified.

8.4.1 All children under the age of three who are involved in a substantiated case of child abuse or neglect or are identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure shall be referred to EI.

8.5 The standard referral process must include:

- a) A form that minimally records the referral source, date and reason(s) for referral, primary health care provider, services currently received, demographic information for the child and family, and final disposition of the referral;
- b) Procedures to ensure that eligibility determination for all referrals shall be made and the initial IFSP meeting held within forty-five (45) days of referral;
- c) Procedures to ensure that all referral sources and families are informed, in writing of the disposition of the referral, and any activities (with timelines) which will be instituted on behalf of the child and family with written parental consent;

- d) Procedures to ensure that all ineligible children and families shall be informed of alternative community services and supports which coincide with identified needs.

#### **8.6 *Public Awareness***

Public awareness is an ongoing, systematic approach to communication with the primary referral sources, health and human service professionals, and parents that focuses on the early identification of all children who are eligible to receive EIS.

#### **Section 9.0 *Evaluation and Assessment Procedures***

9.1 Each EI service provider shall implement a timely comprehensive multidisciplinary evaluation of each child with unknown eligibility for EIS, birth through age two (2), referred for evaluation, and a family directed identification of the needs of each child's family to appropriately assist in the development of the child. Alternatively, families shall be offered the opportunity of an in home screening through the child outreach system, if probable eligibility for EI cannot be ascertained from the referral information. The evaluation and assessment will serve to determine:

- Program eligibility
- Initial IFSP content
- Process for ongoing IFSP monitoring
- Information for transition.

9.2 The assessment shall include, but not be limited to: resources, priorities, and concerns of family, and identification of supports and services necessary to enhance developmental needs of child, with parental consent.

9.3 Each provider shall implement a systematized process that tracks the sequence of all assessment activities and services from the date of referral through the child's discharge on or before three (3) years of age.

#### **9.4 *Multidisciplinary Team***

For each initial team assessment and every reassessment thereafter, at least two members of the multidisciplinary team must be present, two (2) of whom must be qualified personnel and, in all instances, the service coordinator must be present.

#### **9.5 *Child Evaluation and Family Assessment--Child Level of Functioning***

Each child referred to an early intervention program shall receive a multidisciplinary team assessment within forty-five (45) days of the date of referral.

9.6 Such evaluations and assessments must be conducted by personnel trained to use appropriate methods and procedures and informed clinical opinion to evaluate a child's level of functioning in each of the following areas: cognitive, physical, (including vision and hearing), communication, social or emotional development, or adaptive development. A review of each child's current health records and medical history shall be included in this process.

9.7 The outcomes of the assessment process shall be the identification of the child's and family's unique strengths and needs as well as the identification of appropriate early intervention services to meet such needs.

9.8 Any person who has reasonable cause to know or suspect that any child has been abused or neglected shall report such information to the proper authorities at the state Department of Children, Youth and Families, in accordance with the requirements of Chapter 40-11 of the Rhode Island General Laws, as amended.

### **9.9 *Family Concerns, Resources and Priorities***

With the voluntary consent of the parent, the assessment process, shall also include:

- Specification of expressed family concerns, resources and priorities, related to enhancing the child's development, and
- Assessing all supports and linkages with other agencies to enhance the family's ability to provide for the child.

9.10 This information should be collected only if it serves a specific decision making function. Parents and the service coordinator shall jointly determine the method(s) for gathering this information.

### **9.11 *Nondiscriminatory Procedures***

Each early intervention provider shall use a process that ensures that:

- Evaluation and assessment procedures are administered in the native language of the child and parent or other mode of communication;
- Procedures used are racially or culturally sensitive;
- Evaluation and assessment are conducted by qualified personnel.

### **9.12 *Timelines***

All initial evaluations to determine eligibility and assessment activities shall be completed within forty-five (45) days of provider referral.

9.13 An initial meeting to develop the IFSP and will be conducted within the forty-five (45) day time limit.

9.14 In exceptional circumstances wherein multidisciplinary team assessments cannot be completed within this forty-five (45) day timeframe, all children and families shall receive a comprehensive in-home screening for purposes of potential eligibility determination.

9.15 For children who are clearly eligible for services as determined by the screening process, but exceptional circumstances make it impossible to complete the initial evaluation within forty-five (45) days, the early intervention provider will document the circumstances which make an extension necessary and an interim IFSP shall be developed consistent with requirements specified in section 9.16, given informed written parental consent.

9.16 Interim IFSP's may also be developed if EIS are to begin before the evaluation and assessment are completed, with parents' informed consent. The interim IFSP must include the name of the service coordinator, the services immediately needed and proposed outcomes. In these cases, the initial evaluations and assessments must still be completed within forty-five (45) days.

### **9.17 *Determination of Service Levels***

The primary determinant of service levels--i.e., nature, frequency, intensity, location—shall be based on the IFSP process.

9.18 Decisions regarding service provision shall be derived from the child and family assessment process and shall result in an individualize family service plan for each child and family

## **Section 10.0 *Individualized, Family Service Plan (IFSP)***

### **10.1 *Components of Plan***

- The Department assures that each eligible child and family will receive an evaluation and assessment, IFSP service coordination services and access to

procedural safeguards. An IFSP meeting will be conducted no later than forty-five (45) days of the referral. Each IFSP must be developed jointly by the family, service coordinator, at least one (1) member of the multidisciplinary team, and other persons deemed as necessary by the EI service provider or the family. Each IFSP will be based on the multidisciplinary team evaluation and assessment of the child and family and will include the appropriate services necessary to enhance the development of the child and the capacity of the family to meet the developmental needs of the child. The Department provides a standardized IFSP form that all EI providers must use. The following will be included in the IFSP:

- Child status that describes a child's current level of functioning within the areas of physical, (including vision and hearing), cognitive, communication, social or emotional and/or adaptive development. Present status of development will be based upon professionally accepted objective criteria and will focus on child strengths and needs to form the basis for goal development.
- With the concurrence of the family, the IFSP will include a statement of family resources, priorities, and concerns, related to enhancing the development of the child.
- A statement of the measurable results or outcomes expected to be achieved for the child and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to evaluate progress towards such outcomes shall be included. Services shall be modified, as necessary with family consent and prior notice.
- A statement of the specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the child and family. Such statements must include the frequency, intensity, location (i.e. home, center, hospital), method of service, and payment arrangements, if any. Also, services must be provided, to the maximum extent possible, in a natural environment as determined by the family and the IFSP team. A justification is needed when EIS cannot be achieved satisfactory for the infant or toddler.
- A statement of medical, health and other services necessary to the child but not required under Part C, the methods used and persons responsible for accessing them.
- Projected dates for the initiation and anticipated duration of all services listed.
- Name of the service coordinator from a profession most immediately relevant to the child's or family's needs, or who is otherwise qualified to be responsible for implementing the IFSP. This may be the service coordinator assigned at the time of referral or a new one may be appointed at the IFSP meeting.
- Specification of activities that will occur to support the smooth and effective transition of children from early intervention to other environments on or before three (3) years of age.

#### Section 11.0 ***Development, Review, and Evaluation of the IFSP***

11.1 Each IFSP meeting shall minimally include the following participants:

- The parent or parents of the child;
- Other family members, as requested by the parent;
- Other persons, as requested by the parent;

- An advocate or person outside of the family as requested by the parent;
- Service coordinator;
- Multidisciplinary team members who are directly involved in conducting evaluations or assessments and providing services.

Meetings must be held with sufficient written notice, at least seven (7) days prior to meeting, unless previously waived in writing by the parent(s), and in settings and at times convenient to families to ensure attendance. They must be conducted in the native language of the family or other mode of communication used by the family, unless not feasible. If not feasible, an interpreter shall be provided.

In instances where services are needed immediately, an interim IFSP may be initiated for eligible children prior to the completion of the assessment process, provided:

- Written consent of parent is obtained;
- An interim IFSP is developed that includes the name of the service coordinator who will be responsible for implementation of the interim IFSP;
- Specific early intervention services that have been determined to be needed immediately by the child and child's family are identified;
- Projected date of completion of the assessment process determined and agreed to by the parent(s);
- Documentation of the exceptional circumstances is required

#### **11.2 *Progress Review***

Each IFSP must be formally reviewed every six (6) months, or more frequently if conditions warrant, or if a family requests such a review. Participants in this progress review shall minimally include the parent, service coordinator, and others as requested by the parent. The purpose of this meeting is to review the IFSP and to update or develop goals and determine progress toward the desired outcomes and whether or not modification to the IFSP is needed.

#### **11.3 *Annual IFSP***

The annual IFSP meeting to evaluate the IFSP shall be consistent with results and findings derived from the annual multidisciplinary team assessment and progress toward goals. Participants in this meeting shall include those represented in the initial IFSP meeting or members of the multidisciplinary team.

#### **11.4 *Accessibility and Convenience of Meetings***

IFSP meetings shall be conducted:

- In settings and at times that are convenient to families;
- In the native language of the family or other mode of communication used by the family
- In accordance with written notification provided to the family and all other participants by the primary service coordinator at least seven (7) days prior to the date of the meeting.

### **Section 12.0 *Transition of Children to Preschool Programs***

12.1 All programs shall include a description of policies and procedures to ensure a smooth transition of children from Early Intervention into other environments as outlined in the child's transition plan.

### ***12.2 Transition of Children from Part C to Preschool Programs***

When the child is 28 months old, EI providers shall notify the Local Educational Authority (LEA) where the child resides and other community services and supports. A transition meeting is requested by the service coordinator. A transition team shall convene to begin individual transition planning when the child is 30 months of age. The EI service coordinator shall be responsible for scheduling this meeting. The team shall include the parents, the service coordinator, the LEA representative, and other individuals as requested by the parents. The team shall develop a written plan outlining the activities to take place during the transition period, the persons responsible, and the timelines. The plan shall become part of the child's IFSP and shall reflect the individual needs of the child and the participation of the family.

12.3 All children exiting EI shall have a transition-planning meeting. As part of the transition plan, if a child is determined to be ineligible for special education services, the transition team shall refer the family and child to appropriate community resources.

## ***Section 13.0 Comprehensive System of Personnel Development***

13.1 All professional qualified personnel in early intervention programs, whether employed on a full-time or part-time basis, or under a contractual agreement, for whom certificates or licenses are required by state law and regulation, shall hold such certificates or licenses.

13.1.1 Copies of all current licenses, certificates, or registrations required by law or regulation shall be maintained on file by the EI service provider for all professional qualified personnel.

13.1.2 All EI personnel shall meet qualifications as set forth in the EI Certification Standards.

13.2 Each EI service provider shall promptly notify the Department of any staffing changes that would materially affect the provision of EI services.

### ***13.3 Personnel Standards***

The EI service provider shall develop written policies and procedures that will ensure those personnel providing early intervention services to eligible children and their families are appropriately prepared and trained. Such written policies shall include the provision that staff shall attend all training for professional development activities mandated by the Department. This requirement may be met through the use of professional development plans. EI providers shall ensure appropriate supervision of qualified personnel. This shall include the employment of a full-time supervisor who shall participate in training or supervision as required by the Department.

### ***13.4 Service Coordinator***

Each eligible child and the child's family shall be provided with a service coordinator who is responsible for coordinating all services between agencies and serving as the single point of contact to obtain the services and assistance that parents require. There shall be a sufficient number of service coordinators as defined by the Department available to plan and coordinate all EI services in natural environments in a timely manner including the multidisciplinary team evaluation and/or assessment, the initiation of an IFSP meeting within forty-five (45) days of referral, and all IFSP reviews. Service coordinators shall meet the required standards of section 2.25 herein and shall be responsible for:

- Coordination of multidisciplinary evaluations and assessments;
- Participation in development, review and evaluation of integrated Individualized Family Service Plan (IFSP) goals and outcomes;
- Assisting families in identifying available service providers;
- Coordinating and monitoring the delivery of services;
- Informing families of advocacy services;
- Coordinating with medical and health providers;
- Facilitating the development of a transition plan to preschool services, when appropriate; or making referrals to appropriate community services and supports;
- Facilitating the timely delivery of available services;
- Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.

Service coordinators shall serve as the single point of contact in helping parents to obtain the services and assistance they need. Service coordinators shall be persons who have demonstrated knowledge and understanding about eligible infants and toddlers, Part C of the Individual with Disabilities Education Act (IDEA) and the regulations, the nature and scope of services available under the state's Early Intervention Program as delineated in the Certification Standards, the system of payments for those services, and other pertinent information.

### ***13.5 Training and Professional Development***

Requirements for training and professional development of qualified personnel are outlined in EI Certification Standards. Certified providers must document evidence of trainings and shall be maintained on file for all qualified personnel.

## ***Section 14.0 Procedural Safeguards and Confidentiality***

14.1 The intent of this section of the regulations is to ensure that:

- Parents are fully informed of all recommendations in the parent's native language or other mode of communication. If it is not feasible to provide information in the parent's native language or other mode of communication, an interpreter shall be provided;
- Recommendations and all direct services cannot be initiated without written parental consent;
- Parents are allowed the opportunity to inspect and review records; and
- In those instances in which disagreement occurs between EI service provider staff and parents regarding the nature of the assessment process, IFSP process, or service provision, impartial mediation and hearing procedures shall be available for resolving such issues.

### ***14.2 Parent Consent and Notice***

#### ***Definition of Consent***

Consent means that:

- The parent(s) have been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication. If it is not feasible to provide information in the parent's native language or other mode of communication, an interpreter shall be provided.

- The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom;
- The parent understands that the granting of consent is voluntary and may be revoked at any time;
- The parent has the right to determine whether the child or other family members will accept or decline an EIS under this part in accordance with state law, without jeopardizing other early intervention services under this part;
- The definition of "native language" (for persons with limited English proficiency) means language/mode of communication normally used by parents.

#### 14.3 **Prior Notice**

- Written notice, typically through the IFSP process, must be given to the parent(s) of an eligible child prior to the provision or modification of early intervention services to the child or family. All communication must be in a language understandable to the parent(s), and/or must be conveyed in the parent's native language or normal mode of communication. Service providers shall be responsible for assuring availability of qualified foreign language interpreters and/or sign language interpreters.
- The notice must be provided within a reasonable time before the provider proposes or refuses to initiate or change the identification, evaluation, or placement of a child or the provision of early intervention services.
- If the parent is deaf or blind, or has no written language, the notice must be in the language or mode of communication normally used by the parent. An interpreter may be used.
- This notice must be in sufficient detail to inform the parent(s) about the evaluation or direct service activity being proposed or refused, must include the reasons for the actions proposed, and must include all procedural safeguards.

#### 14.4 **Parent Consent** Written informed parental consent must be obtained before:

- Conducting an evaluation and assessment of a child;
- Initiating or changing the provision of early intervention services.

If consent is not given by the parent, the early intervention program shall make reasonable efforts to ensure that the parent:

- Is fully aware of the nature of the assessment or services that would be available;
- Understands that the child will not be able to receive the assessment or services unless consent is given.

#### 14.5 **Surrogate Parents**

The Department shall ensure that the rights of eligible children are protected if:

- No parent can be identified;
- The early intervention provider, after reasonable efforts, cannot discover the whereabouts of a parent;
- The child is a ward of the State.

14.6 The Department shall be responsible for determining the need for a surrogate and the assignment of an individual to act as a surrogate for the child in accordance with existing state law. Such policies shall ensure that a person selected as a surrogate parent:

- Has no interest that conflicts with the interests of the child he or she represents;



- Has knowledge and skills that ensure adequate representation of the child.

14.7 A person assigned as a surrogate parent may not be an employee of any state agency or be involved or be an employee of someone involved in the provision of early intervention or other services to the child or to any family member of the child.

14.8 A surrogate may represent a child in all matters related to:

- The evaluation and assessment of the child;
- Development and implementation of the child's IFSP, including annual evaluations and periodic reviews;
- Procedural safeguards;
- The ongoing provision of early intervention services to the child;
- Any other matters contained in the *Certification Standards*.

14.9 A surrogate parent may be removed for any violation(s) of the surrogate parent agreement.

#### **14.10 *Opportunity to Examine Records***

The parent(s) of eligible children must be afforded the opportunity to inspect and review their child's records, including information relating to evaluation and assessment, eligibility determination, development and implementation of IFSPs, and individual complaints dealing with the child. Parents must be informed in their native language of the nature, type, and purpose of information contained within their child's records, and must receive written notice of a program's policies and procedures regarding information collection, storage, disclosure, and destruction.

#### **14.11 *Access Rights***

Each early intervention program shall permit parents to inspect their record. Requests for record reviews by parents shall be complied with promptly, and in no case shall exceed forty-five (45) days. Record reviews must be facilitated, upon request, prior to IFSP meetings, hearings related to the child's identification, evaluation, or placement, or at any time within the identification, evaluation, and IFSP planning process. Parents or their designated representative may also request copies of records; however, programs may not charge for retrieving or copying such records. Parents or their representatives have the right to a response to reasonable requests for explanations and interpretations of records. The agency will presume the parent has the authority to inspect and review his/her child's records unless the agency has been advised that the parent does not have that authority under state law.

#### **14.12 *Record of Access***

All participating agencies which maintain confidential or personally identifiable information on children and their families must keep a record of parties obtaining access to those records (except access by the child's parents and authorized employees of the agency), including:

- The name of the party requesting access;
- The date of access; and
- The purpose for the access.

#### **14.13 *Records On More Than One Child***

If any record includes information on more than one child, parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

#### **14.14 *List of Types and Locations of Information***

Agencies must provide parents, upon request, a list of the types and location of records collected, maintained, or used by the agency.

#### **14.15 *Amendment of Record at Parent's Request***

In those instances in which the parent believes that the record is inaccurate, misleading, or violates the privacy or rights of the child or family, the parent may request the agency to amend the information. Such amendments, if agreed to by the agencies, must occur promptly. The agency may, within a reasonable time, decide whether to amend the record. If an agency refuses to amend the record, the parent shall be so notified in writing and shall be informed of their right to an impartial hearing. In either case the agency must note in the record the parents expressed disagreement with the information.

#### **14.16 *Right to a Hearing Regarding Information Contained Within Records***

Parents shall be entitled to an impartial hearing if they believe that the contents of their child's record is inaccurate, misleading, or violates the privacy or rights of the child or family. Such impartial hearings shall be subject to the same procedures as specified in section 15.8 of these regulations. If the impartial hearing finds that the record is inaccurate, misleading, or in violation, the agency must amend the record and so inform the parents of such amendments, in writing, within one (1) week of the decision.

If the impartial hearing finds that the record is accurate, the agency must inform the parent of their right to insert a written statement into the record, commenting on information or expressing disagreement with the decision of the agency. Such statements must be maintained as part of the child's record as long as the child's record or contested portion is maintained by the agency, and must be disclosed if the record is reviewed by any party.

#### **14.17 *Hearing Procedures***

Any hearing held under this part regarding a child's record must be conducted under the procedures in 34 *CFR* 99, the Family Education Rights and Privacy Act (FERPA).

#### **14.18 *Consent***

Written parental consent must be obtained before personally identifiable information is disclosed to any individual not employed or placed by the Department, the Early Intervention service provider, or to any other agency, or for any other purpose than to comply with these regulations. The agency may not release information from the records to participating agencies without the consent of the parent unless authorized to do so under FERPA. In the event that the child's multidisciplinary team believes failure to release requested information would be harmful to the health or welfare of the child, the agency may request a due process hearing to determine if the information may be released without parental consent.

#### **14.19 *Safeguards***

All early intervention programs are responsible to protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages. The administrator of the early intervention provider site shall assume responsibility for ensuring that confidentiality of personally identifiable information is maintained. Each provider must maintain a list of individuals who have access to personally identifiable information, and must provide instruction to these individuals regarding all sections of these regulations pertaining to maintenance of confidentiality.

#### **14.20 *Destruction of Information***

Personally identifiable information (excluding permanent record information such as name, address, phone number, early intervention program and services) must be destroyed if the parent so requests. The agency must inform the parent when personally identifiable information is no longer needed or maintained by the agency.

#### **14.21 *Enforcement***

Each service provider, agency, institution, and organization that provides services under Part C shall participate in a self-review process, as well as monitoring and on-site reviews by the Department to ensure that all policies and procedures are being followed.

14.22 Sanctions for failure to comply with the Part C requirements identified during the monitoring process and failure to correct identified deficiencies may include the withholding of Part C funds if determined appropriate by the Department.

14.23 If the Department determines that an EI service provider is not in compliance with the Act or the rules and regulations herein, certification status may be denied, revoked or suspended following notice and opportunity for hearing.

### ***Section 15.0 Mediation and Impartial Hearing Process***

#### ***15.1 Mediation Procedure***

Mediation is a form of conflict resolution in which a "mediator" is called upon to attempt to reach a resolution of differences of opinion between parent (s) and early intervention service providers.

15.2 Either party to a disagreement may submit a written or verbal request to the Department for mediation. The Department has established and implemented procedures that ensure that the mediation process:

- Is voluntary on the part of both parties;
- Is not used to deny or delay a parent(s) right to a due process hearing or to deny any other parental rights afforded under Part C;
- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques; and
- Is completed with fourteen (14) days of request unless otherwise agreed to by the involved parties.

15.3 The Department shall maintain a list of individuals who are qualified mediators and are knowledgeable in laws and regulations relating to the provision of EI services.

15.4 The Department shall bear the cost of the mediation process.

15.5 Each session in the mediation process shall be scheduled in a timely manner and be held in a location that is convenient to the parties involved in the dispute.

15.6 An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement that legally binding and enforceable in a court of law. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process shall be required to sign a confidentiality agreement prior to the commencement of such process.

15.7 Either party may request a hearing, or reactivate a hearing, which was requested prior to mediation. In the event of reactivation, the hearing must be completed and decision rendered within thirty (30) days of the original request of the hearing if the

mediation process fails to achieve a mutually agreeable resolution of the disagreement within the fourteen (14) day time line.

#### ***15.8 Impartial Due Process Hearing***

A parent or public agency may initiate a hearing on any matter pertaining to prior written notice related to the public agency's proposal or refusal to initiate or change the identification, evaluation, or placement of the child, or the provision of services. The procedures at 34 CFR sections 300. 506-300. 512 has been adopted. A hearing shall be conducted by an impartial hearing officer who shall complete the proceeding, render a written decision, distributed to all parties, no later than thirty (30) days after the request for a hearing. The hearing officer shall not be involved in the education or care of the child, or be a person who has any personal or professional interest interfering with objectivity in the hearing. A person who qualifies as a hearing officer shall not be disqualified solely because he/she is paid by the public agency to implement the complaint resolution process. The hearing officer should have knowledge about the provision of complaint management requirements, the needs of the child/family and services available to the child/ family. It shall be the responsibility of the Department to assign and financially reimburse the hearing officer. The Department must keep a list of persons who serve as hearing officers and the list must include the qualifications of each of those persons.

#### ***15.9 Hearings Initiated by the Parent(s)***

A hearing may be initiated by the parent(s) by filing a written complaint with the Department and/or the administrator of the early intervention program. The Department must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the provider initiates a hearing under this section. Within ten (10) days of receipt of a written complaint, a hearing officer shall be designated.

#### ***15.10 Hearings Initiated by the Early Intervention Providers***

A hearing may be initiated by the EI service provider administrator by written notice to the Department with a copy of the notice mailed to the parent(s). Within ten (10) days of receipt of a written complaint, a hearing officer shall be designated.

The Department will inform the parent(s) of any free or low cost legal and other relevant services available in the area. A form will be sent to the parents with information relating to legal counsel.

15.11 In the event either party requests a hearing, the hearing officer appointed will have knowledge about the provisions of the complaint management requirements, the needs of children and families, and the services available to children and families. The hearing officer shall perform the following duties:

- Listen to viewpoints about the complaint, examine information relevant to the issues, and seek to reach a timely resolution of the complaint.
- Provide a record of the proceedings, including the written decision within sixty (60) days of the receipt of the written complaint.

#### ***15.12 Hearing Rights***

Any party to an impartial due process hearing has the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to EIS for eligible children.

- Present evidence and confront, cross-examine and compel the attendance of witnesses.
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) days before the hearing.
- Obtain a written or electronic verbatim record of the hearing.
- Obtain written findings of fact and decisions.

Parents involved in a hearing have the right to have the child who is the subject of the hearing present and to open the hearing to the public.

#### ***15.13 Hearing Decision: Appeal***

A decision made in an impartial due process hearing is final unless a party to the hearing appeals this decision.

#### ***15.14 Administrative Appeal: Impartial Review***

Any party aggrieved by the decision may appeal to the Department. The Director shall arrange for appointment of an impartial review officer who is not an employee of the Department. The review officer shall conduct an impartial review of the hearing. The official conducting the review shall:

- Examine the entire hearing record.
- Insure that the procedures at the hearing were consistent with the requirements of due process.
- Seek additional evidence, if necessary, applying all rights previously cited.
- Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.
- Make an independent decision on completion of the review, but no later than thirty (30) days after the request for the review.
- Give a copy of the written findings and the decision to the parties.

The decision made by the reviewing official is final unless a party brings civil action in a state or federal court. A hearing or reviewing officer may grant specific extensions of timelines beyond the thirty (30) day period at the request of either party.

#### ***15.15 Convenience of Hearings and Reviews***

Each due process hearing and each review must be conducted at a time and place which is reasonably convenient to the parent. No later than thirty (30) days after receipt of the complaint, the impartial due process proceedings will be completed and a written decision will be mailed to each party.

#### ***15.16 Civil Action***

Any party aggrieved by the decision of the reviewing officer has the right to bring civil action in state or federal court.

#### ***15.17 Child's Status During the Proceedings***

During the pendency of any administrative or judicial proceeding regarding EI services unless the early intervention program and parent(s) of the child agree otherwise, the child involved must continue to receive the early intervention services defined in the most recent IFSP signed by both parties. If the complaint pertains to services to be provided under Part B after the child's third (3rd) birthday, Part B is responsible for the provision of all services.

### ***Section 16.0 Resolving Complaints***

16.1 Any individual or agency, public or private, may file a written signed complaint to the Department which identifies an area of noncompliance with these regulations, as well as written facts supporting the complaint, by an early intervention service provider. The Department shall be responsible for investigating such complaints and, if necessary, for conducting on-site visitations, giving the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and reviewing all relevant information to make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this Part; and written responses to the complainant shall be issued by the Department within sixty (60) days of receipt of the complaint. Such written correspondence shall include findings which indicate how the complaint was resolved, and the corrective actions, if any, including timelines required by the early intervention program. Extensions of the sixty (60) day timeline may be granted by the Director only if exceptional circumstances exist with regard to the complaint. The family shall be notified if an extension is granted by the Director.

16.2 The Department shall include procedures for effective implementation of the Department's final decision, if needed, including:

- Technical assistance activities;
- Negotiations; and
- Corrective actions to achieve compliance.

### ***16.3 Complaints and Due Process Hearings Filed under this Section***

If a written complaint is received that is also the subject of a due process hearing under this section, or contains multiple issues, of which one or more are part of that hearing, the state shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action shall be resolved within the sixty (60) day timeline using the complaint procedures described in sections 16.1 and 16.2 herein.

16.4 If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties: (1) The hearing decision is binding; and (2) The Department shall inform the complainant to that effect.

16.5 A complaint alleging a public agency's or private sector provider's failure to implement a due process decision shall be resolved by the Department.

### ***Section 17.0 Severability***

17.1 If any provisions of these rules and regulations or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of the rules and regulations are declared to be severable.